IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

In re:	)	Chapter 11
	)	
CAROLINA SLEEP SHOPPE, LLC,	)	Case No. 13-32346
	)	
Debtor.	)	

DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACTS AND NON-RESIDENTIAL REAL ESTATE LEASES

Carolina Sleep Shoppe, LLC, the debtor and debtor in possession in the above-captioned bankruptcy proceeding (the "Debtor"), moves the Court for entry of an order authorizing the Debtor to reject certain unexpired leases of nonresidential real property and unexpired service contracts pursuant to 11 U.S.C. § 365(a) and Bankruptcy Rule 6006. In support of this motion, the Debtor states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and of the Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and 365, as well as Bankruptcy Rule 6006.

BACKGROUND

2. On November 4, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court. The Debtor continues in possession of its properties and the management of its business and affairs as a debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 case.

3. Organized in 2008, the Debtor is a member managed limited liability company with approximately 40 employees that is a licensed retailer of Serta brand mattresses and bedding. As of the Petition Date, the Debtor operated 16 retail store locations and three warehouse facilities in the Charlotte, Triad, and Raleigh areas of North Carolina. The Debtor conducts its retail operations under the name, "America's Mattress."

RELIEF REQUESTED

4. The Debtor seeks to reject several of its unexpired leases (the "Leases"), which are described more particularly as follows:

Counterparty	Property	Lease Date	Notice Date	Lease Name
Inland American Monroe Poplin, LLC	2807 West Hwy 74, Monroe, North Carolina	12-19-11	12-17-13	"Monroe"
RM Promenade at Concord Mills, LLC	8455 Pit Stop Court NW, Concord, North Carolina	11-15-10	12-17-13	"Concord"
Callicott/Moore Battleground Limited Partnership	2310 Battleground Ave., Greensboro, North Carolina	5-23-11	12-17-13	"Battleground"
TKC University Center, LLC	5700 University Pointe Blvd., Charlotte, North Carolina	5-27-11	11-15-13	"University"
K.E.G., LLC	4212-D West Wendover Ave., Greensboro, North Carolina	5-23-12	11-15-13	"Wendover"
ZP NO. 171, LLC	1562A Highwoods Blvd., Greensboro, North Carolina	1-1-12	11-15-13	"Highwoods"
L.E. Pope Building Co., Inc.	1319 and 1321 S. Park Dr., Greensboro, North Carolina	2-8-12	11-15-13	"Park Drive"
Raleigh Portfolio NW, LLC	1100 Corporation Parkway, Raleigh, North Carolina	5-14-12	11-15-13	"Raleigh"
Regency Centers, LP	7629-C Pineville Matthews Road, Charlotte, North Carolina	9-18-08	11-15-13	"Carmel Commons"
Achieve Fitness, LLC	1319 and 1321 S. Park Dr., Greensboro, North Carolina	2-12-13		"Park Drive Sublease"

5. The Debtor also seeks to reject the certain executory contracts (the "Executory Contracts" and together with the Leases, the "Contracts"), which are described more particularly on Exhibit A, attached hereto and incorporated by reference as if set forth fully herein.

6. The Debtor has determined that it is in the best interests of the Debtor, its creditors, and its bankruptcy estate as a whole to reject the Contracts in order to enable the Debtor to successfully reorganize its obligations, eliminate unsustainable expenses, and continue the operation of its business from its financially viable locations.

BASIS FOR RELIEF REQUESTED

7. Section 365(a) governs the rejection of any executory contract or unexpired lease. A debtor in possession may, subject to Court approval, assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a).

8. The significance of rejection under section 365 is that it relieves the estate of onerous and burdensome future obligations. *See In re Shangra-La, Inc.*, 167 F.3d 843, 849 (4th Cir. 1999) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984)). Allowing a debtor to reject such burdensome contracts promotes other bankruptcy goals, including: (i) allowing the debtor to take advantage of those contracts that benefit the estate, (ii) promoting the debtor's "fresh start," (iii) permitting the allowance and determination of claims, and (iv) preventing parties from remaining in doubt concerning their status vis-à-vis the estate. *See In re Spectrum Info. Techs., Inc.*, 190 B.R. 741, 745 (Bankr. E.D.N.Y. 1996).

9. The decision to assume or reject an executory contract or unexpired lease is a matter within the Debtor's "business judgment." *See NLRB v. Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd*, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984) (stating, "[t]he usual test for rejection of an executory contract is simply whether rejection would benefit the

estate, the 'business judgment' test."). *See also In re Maverick Mining Corp.*, 36 B.R. 837, 839 (Bankr. W.D. Va. 1984) (same).

10. The business judgment standard mandates that a court shall approve a debtor's business decision unless the decision is the product of bad faith or gross abuse of discretion. *See Lubrizol Enters. Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *see also Enterra Corp. v. SGS Assocs.*, 600 F.Supp. 678, 684-85 (E.D. Pa. 1985) (business judgment standard requires deference to debtor's management absent showing of bad faith, fraud, or gross overreaching).

11. In its continuing efforts to reorganize its business, the Debtor has identified various existing and unsustainably burdensome obligations of the estate. The Contracts are not necessary to the continued operation of the Debtor's business and threaten to undermine the Debtor's ability to successfully reorganize. As a result, the Debtor has determined that, in the exercise of its sound business judgment, the Contracts are of no further value to its estate and hereby moves for the rejection of the Contracts.

12. The Debtor submits that rejection of the Contracts will not unjustly prejudice or unduly harm the parties to the Contracts. The parties to the Contracts will be allowed to (i) file proofs of claims claim for damages arising from the rejection of the Contracts by the claims bar date to be established by the Court, and/or (ii) file requests for allowance of administrative expense claims for post-petition amounts due under the Contracts within thirty (30) days of the entry of an order granting this Motion. The Debtor herein reserves all rights to object to any and all claims filed by parties to the Contracts in response to this Motion.

NOTICE

Notice of this Motion has been provided to (a) the United States Bankruptcy Administrator for the Western District of North Carolina; (b) Inland American Monroe Poplin, LLC; (c) RM Promenade at Concord Mills, LLC; (d) Callicott/Moore Battleground Limited Partnership; (e) TKC University Center, LLC; (f) K.E.G., LLC; (g) ZP NO. 171, LLC; (h) L.E. Pope Building Co., Inc.; (i) Raleigh Portfolio NW, LLC; (j) Regency Centers, LP; (k) Achieve Fitness, LLC; (l) CPI Security Systems; (m) Time Warner Cable; (n) Duke Energy; (o) Waste Management; (p) American Express Travel Related Services Company, Inc.; (q) the Debtor's twenty (20) largest unsecured creditors; and (r) all parties requesting notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such further relief as is just and proper.

Dated: Charlotte, North Carolina
January 10, 2014

MOON WRIGHT & HOUSTON, PLLC

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Exhibit A

Counterparty	Account Number or Contract Description
CPI Security Systems	s13c56 s12f64 S14075 s12636 s1d346 r2cb73 s11db3 s1431e s14437 s145e7 g28b70 g265ee s12672 g26c2d g26ee5 g25b56 g25b4f
Time Warner Cable	6014160-01 423965501 6034749-01 6071842-01 6039011-01 605323501 6033621-01 6038892-01 6053214-01
Duke Energy	1887523759 1096654073 1966469528 1328982273 1438469323 1409992435 1900994042 1130490198
Waste Management	099-0090705
American Express Travel Related Services Company, Inc.	Agreement for American Express Card Acceptance